

# **Exhibit D**

AMERICAN ARBITRATION ASSOCIATION  
CONSTRUCTION INDUSTRY ARBITRATION RULES

<p>LEEWARD CONSTRUCTION COMPANY, Ltd.</p> <p>Claimant,</p> <p>v.</p> <p>AMERICAN UNIVERSITY OF ANTIGUA COLLEGE OF MEDICINE C/O GCLR, LLC,</p> <p>Respondent.</p>	<p>Case No. 50 110 T 00075 11</p> <p><b><u>WITNESS STATEMENT OF PRABHU MARUDHERI</u></b></p>
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I, PRABHU MARUDHERI, state as follows:

1. I am the Executive Director, Finance, for GCLR, LLC ("GCLR"), an agent for Respondent American University of Antigua ("AUA").
2. GCLR is a limited liability company organized and existing under the laws of the State of New York, USA. GCLR provides administrative, consulting and back office support, including registrar services, records retention and management, student and faculty recruitment, admissions processing, marketing, legal, accounting and financial management and reporting, bursar, financial aid, public relations management, intellectual technology, human resources, and data management service and support for colleges, universities and other institutions of higher education. It also owns, manages and controls colleges, universities and other institutions of higher education, including AUA.
3. As GCLR's Executive Director, Finance, I am the individual responsible for, among other things, administering all payments made by or on behalf of AUA.

4. I submit this statement in support of AUA's Counterclaims. Unless otherwise stated, the statements made herein are based upon either my personal knowledge or my review of the documents cited, and are, to the best of my knowledge, true and correct.

Liquidated Damages

5. On September 25, 2008, Claimant Leeward Construction Corp., Ltd. ("Leeward") entered into a Contract with AUA to provide certain construction services in connection with the construction of AUA's new medical school campus in St. John's, Antigua. AUA Exhibit 1.

6. According to the Contract Documents, the parties agreed upon a 52 week construction period (364 days), commencing as of May 1, 2008 and ending on April 30, 2009 (the "Contract Time"). See Contract, §§ 3.1, 3.2 and 3.3 (AUA Exhibit 1 at AUA 000006).

7. The Contract Documents provide that the "[t]ime limits stated in the Contract Documents are of the essence of the Contract." General Conditions to the Contract, § 8.2.1 (AUA Ex. 1 at AUA 000041).

8. The Contract Documents further provide that AUA "will suffer financial damage if the project is not substantially complete within the" Contract Time, and that Leeward "shall be liable for and pay" to AUA as liquidated damages the sum of US \$1,500 per day until the work is substantially complete. Contract, § 3.3.1 (AUA Ex. 1 at AUA 000006).

9. According to an email from Col. Antony to Neil Dickinson dated February 16, 2009 (AUA Exhibit 2), AUA granted Leeward a two-week extension of time until May 14, 2009 to complete its work during which Leeward would not be assessed liquidated damages. AUA did not grant any further extensions of time beyond May 14, 2009.

10. According to Leeward's Amended Demand for Arbitration, Leeward did not achieve Substantial Completion for the work it performed under the Contract Documents until July 31, 2009, 78 days after May 14, 2009. Amended Demand, ¶ 11.

11. Based upon Section 3.3.1 of the Contract, AUA is therefore entitled to US \$117,000 in Liquidated Damages, calculated based upon the 78 days between the end of the Contract Time and the date of Substantial Completion, at a rate of US \$1,500 per day.

Actual Damages

12. Prior to and during the construction of the new campus, AUA operated its medical school from two locations: (1) AUA's West Campus, which is leased from West Indies Oil Company; and (2) four small buildings located at the site of AUA's new campus (the "Quads"). Once built, the new campus would allow AUA to permanently vacate the West Campus, and to operate the medical school solely from the new campus, which included the Quads.

13. As a direct result of Leeward's failure to complete the project within the Contract Time, AUA could not open its new medical school campus for the fall of 2009 semester as planned, and instead had to continue operating the medical school from both the Quads and the West Campus from August 2009 through December 2009, at a considerable cost.

14. Specifically, as described more fully below, to operate its school from both the West Campus and the Quads in the fall of 2009, AUA incurred the following expenses it otherwise would have avoided had Leeward completed its work within the Contract Time:

(a) AUA continued to lease the West Campus location from The West Indies Oil Company, Limited from August 2009 through December 2009. AUA paid a monthly fee in the amount of US \$39,874.82 (which included rent plus ABST) from August through November 2009. True and accurate copies of the wire payment confirmations for the August 2009 through November 2009 payments are compiled as AUA Exhibit 3. AUA paid an additional US \$34,673.75 for December 2009, but did not pay ABST, having established it was exempt. Attached as Exhibit 4 is a true and accurate copy of

the December 2009 invoice, along with documents confirming that AUA paid the rent with a US \$20,860.55 payment plus a US \$13,813.20 set-off from its security deposit.

(b) AUA paid basic utilities (electric and water) to The West Indies Oil Company, Limited for the West Campus in varying amounts from August 2009 through December 2009, totaling US \$ 113,629. True and accurate copies of these invoices, all of which were paid, are compiled as AUA Exhibit 5.

(c) AUA paid for security guard services for the old campus location to People's Protection Security Service in varying amounts from August 2009 through December 2009, totaling US \$31,341. True and accurate copies of these invoices, all of which were paid, are compiled as AUA Exhibit 6.

(d) AUA paid Lowger Bus Lines, Ltd. to provide, among other things, shuttle services for faculty and students between the West Campus and the Quads in varying amounts from August 2009 through December 2009. True and accurate copies of these invoices, all of which were paid, are compiled as AUA Exhibit 7. Of the US \$144,940 billed by and paid to Lowger, US \$34,415 represented the costs specifically incurred for shuttle trips. The invoices compiled as Exhibit 7 are highlighted in yellow to reflect the shuttle trip charges only.

15. In the aggregate, as summarized in the chart attached hereto as Exhibit 1, AUA incurred a total of US \$373,558 to operate its medical school from the old campus location for the fall semester of 2009.

I attest that the foregoing is true and correct to the best of my knowledge and belief.

  
PRABHU MARUDHERI

Executed on: February 3, 2012  
New York, New York, USA

# Exhibit 1

## Expenses Incurred Operating AUA West Campus (August 2009 - December 2009)

In EC\$	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09	Total
West Indies Oil Company (West Campus rent)	107,191	107,191	107,191	107,192	93,210	521,976
Lowger Bus Lines-Shuttle Trips	17,215	22,100	19,055	23,265	10,880	92,515
People's Protection Security Services	15,500	14,025	14,625	23,200	16,900	84,250
West Indies Oil Company (Electricity & water)	60,402	55,962	60,373	63,477	65,244	305,458
	<u>200,308</u>	<u>199,278</u>	<u>201,244</u>	<u>217,134</u>	<u>186,234</u>	<u>1,004,199</u>

## Expenses Incurred Operating AUA West Campus (August 2009 - December 2009)

In US\$	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09	Total
West Indies Oil Company (West Campus rent)	39,875	39,875	39,875	39,875	34,674	194,173
Lowger Bus Lines-Shuttle Trips	6,404	8,221	7,088	8,654	4,047	34,415
People's Protection Security Services	5,766	5,217	5,440	8,630	6,287	31,341
West Indies Oil Company (Electricity & water)	22,469	20,818	22,459	23,613	24,271	113,629
	<u>74,514</u>	<u>74,131</u>	<u>74,862</u>	<u>80,773</u>	<u>69,278</u>	<u>373,558</u>